**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL APPLICATION NO.6825 OF 2005**

Laxman Abaji Surve ...Applicant
Vs.
The State of Maharashtra ...Respondent

Mr Nitin Pradhan i/by Shri S.D.Khot for the Applicant.
Ms Rajeshree Gadhvi, A.P.P. for the Respondent.

**CORAM : A. S. OKA, J.**
**DATE : OCTOBER 20, 2005.**

**P.C.:**

1. Heard the Advocate appearing for the Applicant and the learned A.P.P. for the State. The offence registered against the Applicant is under sections 407, 411, 285 read with section 34 of the Indian Penal Code and section 3, 7 of the Essential Commodities Act.

2. The Advocate appearing for the Applicant submitted that name of the Applicant does not figure in the F.I.R. He pointed out that on 20th September, 2005 and on 23rd September, 2005 he attended Matushri Ratanben Palan Manek Maru Hospital and Research Centre for undergoing medical checkup and treatment as the Applicant is suffering from mild cardiomegaly. He pointed out that the incident has taken place late in the night of 22nd September, 2005 or early in the morning of 23rd September, 2005 and the place of incident is near village Lodhivali, Taluka Khalapur,

District Raigad. He submitted that considering the fact that name of the Applicant does not figure any where and the fact that his age is sixty-four years and he is suffering from heart ailment, he is entitled to pre-arrest bail.

3. The learned A.P.P. pointed out that reference to Babu Seth or Balu @ Dattu Surve in the F.I.R. is to the present Applicant. Therefore, the presence of the Applicant and his participation in crime is established. He placed reliance on other offences registered against the Applicant to show that his name is Balu Surve.

4. The name of the present Applicant is Laxman Aabaji Surve. At this stage, there is no material to show that Laxman and Babu Seth or Balu @ Dattu Surve mentioned in the F.I.R. are one and the same persons. The report submitted by the Investigating Officer records that on 20th September, 2005 and on 23rd September, 2005 the Applicant attended the said hospital at Dr. Ambedkar Road, Parel for medical treatment and the said fact has been verified after making inquires in the said hospital. It is stated that he has been treated as out-patient and not as an indoor patient.

5. Prima facie, it appears that there is nothing on record to show that Babu Seth or Balu @ Dattu Surve is the name of the Applicant. It is an admitted position that on 20th September, 2005 and on 23rd September, 2005 the Applicant attended the hospital at Parel, Mumbai for treatment regarding heart ailment. The offences which are cited as antecedents of the Applicant relate to the year 1991 to 2001. There is one offence in the year 2002 where 'C' summary is pending.

6. Considering the aforesaid facts, it is apparent that undue harassment will be caused to the Applicant if the pre-arrest bail is not granted.

7. Hence, I pass the following order:

: O R D E R :

i) In the event of the arrest of the Applicant in connection with C.R.No.138 of 2005 registered with Khalapur Police Station, District Raigad, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.20,000/- with one or two sureties local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant will attend the concerned Police Station on every Saturday from 04.00 p.m. to 06.00 p.m. till the filing of the chargesheet and will co-operate for investigation.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating Agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till chargesheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

**JUDGE**